

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAI NGUYEN,

Petitioner,

v.

KEVIN HIXON,

Respondent.

No. 2:25-cv-1142-DC-SCR

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, files this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

Court records reveal that petitioner has previously filed a petition for a writ of habeas corpus attacking his Sacramento County Superior Court conviction and sentence. See Nguyen v. Scribner, Case No. 2:06-cv-1389-GEB-CMK (E.D. Cal.). The previous petition was filed on June 22, 2006 and was dismissed with prejudice on October 31, 2006 as untimely filed. See ECF No. 12 in Case No. 2:06-cv-1389-GEB-CMK. Even construing petitioner's habeas petition as a challenge to the denial of his petition for resentencing under California Penal Code § 1170.95, it

1 is still an unauthorized second or successive habeas since petitioner raised these same challenges  
2 in Nguyen v. Acevedo, Case No. 2:23-cv-1086-DAD-JDP (E.D. Cal.), which was denied on  
3 October 24, 2024.

4 Before petitioner can proceed with the instant petition, he must move in the United States  
5 Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the  
6 application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's petition must be dismissed without  
7 prejudice to its re-filing upon obtaining authorization from the United States Court of Appeals for  
8 the Ninth Circuit.

9 Accordingly, IT IS HEREBY ORDERED that petitioner's application to proceed in forma  
10 pauperis (ECF No. 6) is granted; and

11 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice as an  
12 unauthorized second or successive § 2254 petition.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days  
15 after being served with these findings and recommendations, petitioner may file written  
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
17 Findings and Recommendations." Petitioner is advised that failure to file objections within the  
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
19 F.2d 1153 (9th Cir. 1991).

20 DATED: October 6, 2025

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22 SEAN C. RIORDAN  
23 UNITED STATES MAGISTRATE JUDGE  
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